

## §716.6

## 15 CFR Ch. VII (1–12 Edition)

BIS will provide Host Team notice to the inspection point of contact of the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(b) *Period of inspections*—(1) *Schedule 1 facilities*. For a declared Schedule 1 facility, the Convention does not specify a maximum duration for an initial inspection. The estimated period of routine inspections will be as stated in the facility agreement, unless extended by agreement between the Inspection Team and the Host Team Leader, and will be based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out there. The Host Team Leader will consult with the inspected facility on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See §716.4(c) and (i) of the CWC for a description of these activities.

(2) *Schedule 2 plant sites*. For declared Schedule 2 plant sites, the maximum duration of initial and routine inspections shall be 96 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See §716.4(c) and (i) of the CWC for a description of these activities.

(3) *Schedule 3 and UDOC plant sites*. For declared Schedule 3 or UDOC plant sites, the maximum duration of routine inspections shall be 24 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See

§716.4(c) and (i) of the CWC for a description of these activities.

(c) *Frequency of inspections*. The frequency of inspections is as follows:

(1) *Schedule 1 facilities*. As provided by the Convention, the frequency of inspections at declared Schedule 1 facilities is determined by the OPCW based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out at the facility. The frequency of inspections will be stated in the facility agreement.

(2) *Schedule 2 plant sites*. As provided by the Convention and the Act, the maximum number of inspections at declared Schedule 2 plant sites is two per calendar year per plant site. The OPCW will determine the frequency of routine inspections for each declared Schedule 2 plant site based on the Inspection Team's assessment of the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site, and the nature of the activities carried out there. The frequency of inspections will be stated in the facility agreement, if applicable.

(3) *Schedule 3 plant sites*. As provided by the Convention, no declared Schedule 3 plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and UDOC plant sites in the United States may not exceed 20 per calendar year.

(4) *UDOC plant sites*. As provided by the Convention, no declared UDOC plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and UDOC plant sites in the United States may not exceed 20 per calendar year.

### §716.6 Facility agreements.

(a) *Description and requirements*. A facility agreement is a site-specific agreement between the U.S. Government and the OPCW. Its purpose is to define procedures for inspections of a specific declared facility that is subject to inspection because of the type or amount of chemicals it produces, processes or consumes.

(1) *Schedule 1 facilities.* The Convention requires that facility agreements be concluded between the United States and the OPCW for all declared Schedule 1 facilities. For new Schedule 1 production facilities declared pursuant to § 712.4 of the CWCR, the USNA, in coordination with the Department of Commerce, will conclude a facility agreement with the OPCW before the facility begins producing above 100 grams aggregate of Schedule 1 chemicals.

(2) *Schedule 2 plant sites.* The USNA will ensure that such facility agreements are concluded with the OPCW unless the owner, operator, occupant or agent in charge of the plant site and the OPCW Technical Secretariat agree that such a facility agreement is not necessary.

(3) *Schedule 3 and UDOC plant sites.* If the owner, operator, occupant or agent in charge of a declared Schedule 3 or UDOC plant site requests a facility agreement, the USNA will ensure that a facility agreement for such a plant site is concluded with the OPCW.

(b) *Notification; negotiation of draft and final facility agreements; and conclusion of facility agreements.* Prior to the development of a facility agreement, BIS shall notify the owner, operator, occupant, or agent in charge of the facility, and if the owner, operator, occupant or agent in charge so requests, the notified person may participate in preparations with BIS representatives for the negotiation of such an agreement. During the initial or routine inspection of a declared facility, the Inspection Team and the Host Team will negotiate a draft facility agreement or amendment to a facility agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of the facility may observe facility agreement negotiations between the U.S. Government and OPCW. As a general rule, BIS will consult with the affected facility on the contents of the agreements and take the facility's views into consideration during negotiations. BIS will participate in the negotiation of, and approve, all final facility agreements with the OPCW. Facilities will be notified of and have the right to observe final facility agree-

ment negotiations between the United States and the OPCW to the maximum extent practicable, consistent with the Convention. Prior to the conclusion of a final facility agreement, the affected facility will have an opportunity to comment on the facility agreement. BIS will give consideration to such comments prior to approving final facility agreements with the OPCW. The USNA shall ensure that facility agreements for Schedule 1, Schedule 2, Schedule 3 and UDOC facilities are concluded, as appropriate, with the OPCW in coordination with BIS.

(c) [Reserved]

(d) *Further information.* For further information about facility agreements, please write or call: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, Telephone: (202) 482-1001.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78183, Dec. 22, 2008]

#### § 716.7 Samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample as provided for in the Convention and the Act and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103. Analysis will be restricted to verifying the absence of undeclared scheduled chemicals, unless otherwise agreed after consultation with the facility representative.

#### § 716.8 On-site monitoring of Schedule 1 facilities.

Declared Schedule 1 facilities are subject to verification by monitoring with on-site instruments as provided by the Convention. For facilities subject to the CWCR, however, such monitoring is not anticipated. The U.S. Government will ensure that any monitoring that may be requested by the OPCW is carried out pursuant to the Convention and U.S. law.

#### § 716.9 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to the CWCR